

REMARKS

This Response is being filed in connection with the Office Action mailed March 8, 2004. Applicants first wish to thank the Examiner for the telephone discussion March 18, 2004. Applicants believe that the claim amendments and new claims are consistent with the discussion and address all outstanding rejections, and place the application in better condition for allowance or for consideration on appeal.

Claims 3, 6, 8, 23 to 26, 30 to 61, 65 to 78 are pending. Claims 30 to 61 stand withdrawn from consideration as directed to a non-elected invention. Claim 66 has been allowed. By the present Response, new claims 79 to 88 have been added. The new claims present the subject matter of several rejected claims in better form for allowance or consideration on appeal. Accordingly, upon entry of the Response, claims 3, 6, 8, 23 to 26 and 65 to 88 are under consideration.

Regarding the Claim Amendments

The amendments to claims 6, 8, 23 to 25, 65 and 67 were made in order to present the claims in better condition for allowance or consideration on appeal. In particular, claims 3 and 65 have been amended to recite a single antibody, as suggested by the Examiner. In view of the amendment to claim 3, claims 6, 8 and 23 to 25 have been amended to multiply depend from claims 3 and new claims 79 to 81 or 84. New claims 79 to 84 are directed to the individual antibodies amended from claims 3 and 65. Claim 8 has been amended in light of the amendment to claim 3 and to recite "the antibody of any of claims 3 or 79 to 81," in order to provide to more clearly indicate antecedent basis for "antibody." Claim 23 has been amended in light of the amendment to claim 3, and to recite a "pharmaceutical formulation" in order to more clearly indicate antecedent basis. The amendment is supported, for example, at page 5, line 9. Claim 67 has been amended in order to more clearly indicate that the recited human antibody includes a heavy and a light chain sequence encoded by the heavy and light chain sequences selected from F2-103, F5-77 and F5-157. The amendment to claim 67 is also supported, for example at page 44, line 20, to page 45, line 52, which discloses the heavy and light chains of the recited antibodies. Thus, as the claim amendments were made to address mere informalities no new

matter has been added. Furthermore, as the amendments place the claims in better condition for allowance or consideration on appeal, entry thereof is respectfully requested.

Regarding the New Claims

New claims 79 to 88, are supported throughout the specification. In particular, claims 79 to 84 are supported, for example, by claim 3 as originally filed, at page 10, lines 15-25, and at page 44, line 22, to page 45, line 52, which discloses nucleotide sequences encoding the recited antibody heavy and light chains. Claim 85 is supported, for example, by claim 8, as originally filed. Claims 86 to 88 are supported, for example, at page 10, lines 15-25, and at page 44, line 22, to page 45, line 52. Thus, as claims 79 to 88 are supported by the specification, no new matter has been added. Furthermore, as claims 79 to 88 are in better condition for allowance or consideration on appeal, entry thereof is respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. §112

The rejection of claims 3, 6, 8, 24 to 26, 65 and 67 to 78 under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement is respectfully traversed. Allegedly, it is unclear that Applicant's have satisfied the deposit requirements for the recited antibodies.

In Applicants prior response, the specification was amended to include the appropriate deposit information, in accordance with 37 C.F.R. §1.802(a). Notwithstanding the deposits, as specifically provided for by 37 C.F.R. §1.802(c), Applicants reiterated that reference to the biological material in the specification does not create any presumption that such material is necessary to satisfy 35 U.S.C. §112. Furthermore, Applicants stated that access to the deposits will be as provided for under 37 C.F.R. §1.808(a) and (b). Since Applicants have made the deposits, and have fully complied with all the requirements for deposits under 37 C.F.R. §1.801-1.809, no legal grounds for this rejection remain. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

The rejection of claims 3, 6, 8, 23 to 26, 65 and 67 under 35 U.S.C. §112, second paragraph, as allegedly indefinite is respectfully traversed. The claims stand rejected due to various alleged ambiguities in the claim language.

Claims 3, 6, 8, 23 to 26, 65 and 67 are clear and definite as written. Nevertheless, solely in order to further prosecution of the subject application and without conceding that the rejection is in any way proper, the claims have been amended in order to address mere informalities. Given that the amendments were made solely to address informalities, a presumption of prosecution history estoppel does not arise.

As set forth above, claims 3 and 65 have been amended to recite antibodies defined by individual hybridomas, as suggested by the Examiner. In light of the amendment to claims 3 and 65 suggested by the Examiner, new claims 79 to 81 similarly recite antibodies defined by individual hybridomas. Claim 8 has been amended to recite "the antibody of any of claims 3 or 79 to 81" in order to address the alleged lack of adequate antecedent basis. Claim 23 has been amended to recite a "pharmaceutical formulation" in order to address the alleged lack of adequate antecedent basis. New claims 82 to 84 recite antibodies having heavy and light chains defined by specific deposited cell lines, in accordance with the Examiner's suggestions. New claims 86 to 88 also recite antibodies having heavy and light chain variable sequences of specific hybridomas or deposited cell lines, in accordance with the Examiner's suggestions.

Accordingly, in view of the amendments, claims 3, 6, 8, 23 to 26, 65 and 67 are clear and definite, as are new claims 79 to 88. Applicants therefore respectfully request that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

CONCLUSION

In summary, for the reasons set forth herein, Applicants maintain that claims 3, 6, 8, 23 to 26 and 65 to 88 clearly and patentably define the invention, respectfully request that the Examiner reconsider the various grounds set forth in the Office Action, and respectfully request the allowance of the claims which are now pending.

If the Examiner would like to discuss any of the issues raised in the Office Action, Applicant's representative can be reached at (858) 509-4065.

Please charge any additional fees, or make any credits, to Deposit Account No. 50-2212.

Respectfully submitted,

Date: _____

9.2.09

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